COPY

No. 71-1549

FILED

In the

Supreme Court of the United States

October Term 1971

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 43867

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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COMPELLING REASONS EXIST FOR REHEARING

Under the authority of United States Supreme Court Rule 58(2), 28 U.S.C.A. Petitioner-Appellant Frederika Blankner respectfully requests that the Court allow rehearing of its order of June 26, 1972 denying the Petition for Writ of Certiorari. Since the denial of that Petition your Petitioner has ascertained that there exist compelling reasons, not heretofore presented, for this Court to accept

jurisdiction. These new grounds are set forth in the following paragraphs.

A.

The Effect of Fuentes v. Shevin, ... U.S. ..... (Nos. 70-5039 and 70-5138), 40 LW 4692.

On June 12, 1972, subsequent to the filing of the Petition for Writ of Certiorari, this Court handed down its important decision in the case of *Fuentes* v. *Shevin, supra.* In that case the Court held against the validity of Florida and Pennsylvania replevin statutes which permitted a seller of property under a conditional sales contract to retake the property from the buyer without a prior judicial hearing. The issue in the case, as framed by the Court, was whether the due process right to notice and hearing was afforded the buyer at a time when the deprivation could still be avoided.

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if it was unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone.' *Stanley* v. *Illinois*, ... U.S. ....., ..."

Viewed in this posture the *Fuentes* decision bears overwhelming similarity to the case at bar. Here it is undisputed that Petitioner was not given notice or a hearing in 1964 when the City of Chicago's Department of Urban Renewal on October 8, 1964, made the fundamental and

irrevocable decision to declare the area "slum and blighted" and thus made the petitioner's property subject to condemnation proceedings and clearance. Nor was notice or an adversary hearing granted Petitioner later the same year when on November 16, 1964 the City Council of Chicago adopted the findings of the Department by Ordinance. Nor was personal notice given or hearing afforded in 1966 when the Council approved by Ordinance the Development Plan for the area in which Petitioner's property was located.

Rather, it was not until 1968, when the City of Chicago filed a Petition to Condemn in the Circuit Court of Cook County, that Petitioner was allegedly afforded the kind of notice and hearing called for by the *Fuentes* holding. Surely the requirement in that case that a hearing be held "at a meaningful time" is not fulfilled by granting a hearing four years after the effective decision to seize the property has been made. The inherent unfairness of such a system is further emphasized by the fact that when Petitioner was finally given a hearing in 1968 the burden was placed upon her to disprove the findings of the City and the Department made in 1964. Hence, Petitioner urges that the facts of this case should be re-evaluated in light of the intervening *Fuentes* decision.

B.

The Denial of Equal Protection by the Illinois Eminent Domain Act. (Ill.Rev.Stat., 1968, Ch. 47, Sec. 1 et seq.)

The Illinois Statutes confer the right of eminent domain on municipalities with the specific requirement that the right is to be exercised "by condemnation proceedings in conformity with the provisions of the con-

stitution and the statutes of the State of Illinois", as follows:

> "Acquirement of property. § 11-61-1. The corporate authorities of each municipality *may exercise the right of eminent domain by condemnation proceedings in conformity with the provisions of the constitution and statutes of the State of Illinois* for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare. . . ."

(Ill.Rev.Stat., 1968, Ch. 24, Cities and Villages Municipal Code 1961, Sec. 11-61-1) (Emphasis supplied)

This passage of the law clearly establishes that either the municipality, in this case the City of Chicago, must take the property "by condemnation proceedings in conformity with the provisions of the constitution and statutes of the State of Illinois" or it does not have the authority to take the property at all.

Accordingly, the City's Petition to Condemn claims that it is brought pursuant to the authority of the Urban Renewal Consolidation Act of 1961 (Ill.Rev.Stat., 1968, Ch. 67½ Sec. 91.101-91.136) and the Blighted Areas Redevelopment Act of 1947 (Ill.Rev.Stat., 1968, Ch. 67½ Sec. 63-91).

Both of those Acts specify that the proceedings to condemn slum and/or blighted property brought thereunder shall be subject "in all respects" to the Eminent Domain Act, as follows:

> "*Condemnation proceedings* instituted hereunder shall be brought by and in the name of the municipality and shall be *in all respects in accordance with an Act* entitled 'An Act to provide for the exercise of the right of *eminent domain,*' approved April 10, 1872, as heretofore or hereafter amended. (Chapter 47, § 1 et seq.)

(Ill.Rev.Stat., 1968, Ch. 67½, Sec. 91.112 and also Sec. 91.122, and Sec. 76) (Emphasis supplied)

Similarly to the Cities and Villages Act quoted above, this passage of the law likewise clearly establishes that, in order to exercise the right of eminent domain, either a municipality, in this case the City of Chicago, must take the property by "condemnation proceedings . . . in all respects in accordance with" the Eminent Domain Act or it does not have the authority to take the property at all.

The Eminent Domain Act contains a provision for so-called "quick take". If the Condemning Authority, usually the State of Illinois, chooses, it may seek an immediate order upholding the taking of the property and granting the immediate right to possession even though the issue of compensation has not yet been decided. (Ill. Rev.Stat., 1968, Ch. 47, Sec. 2.1) This procedure is known as a "motion to take". In such a case the owner of the condemned property is granted two rights:

a) A full hearing must be held by the trial court to determine that the right of eminent domain is "not being improperly exercised in the particular proceeding," as follows:

> "Hearing— . . . .
>
> § 2.2. (a) *The court* shall fix a date, not less than five (5) days after the filing of such motion, for the hearing thereon, and shall require *due notice* to be given to each party to the proceeding whose interests would be affected by the taking requested. . . .
>
> (b) *At the hearing*, if the court has not previously, in the same proceeding, determined that the petitioner has authority to exercise the right of eminent domain, that the property sought to be taken is subject

> to the exercise of such right, and that *such right is not being improperly exercised in the particular proceeding*, then *the court first shall hear and determine such matters*. The court's order thereon shall be a *final order* and *an appeal may be taken therefrom* by either party within thirty (30) days after the entry of such order. . . ."

(Ill.Rev.Stat., 1968, Ch. 47, Sec. 2.2) (Emphasis supplied.)

No requirement is placed on the property owner that he overcome a presumption of the propriety of the taking.

b) The property owner is given the opportunity to take an *interlocutory appeal* solely on the issue of the propriety of the exercise of the right of eminent domain. (Ill.Rev.Stat., 1968, Ch. 47, Sec. 2.2 as quoted above)

In the case at bar, because the City did not exercise its option to file a "motion to take", the Petitioner was *forced* to contest the taking of her property by filing a Traverse. In such a proceeding the Illinois Courts have consistently held that the administrative finding of the Department of Urban Renewal, taken with the City Council Ordinance adopting the same, establish *prima facie* that the right of eminent domain is properly exercised. See *City of Chicago* v. *Barnes*, 30 Ill.2d 255, 257 (1964).

Said procedure, forced upon Petitioner, precluded her from the opportunity of an immediate appeal. The Illinois Supreme Court refused to treat the order of the trial court on the Traverse as a final order and hear an appeal solely on the issue of the taking, and so the Court denied her appeal of the Traverse as premature. Thus, in order to appeal this issue of the right of the City of Chicago to take her property it was necessary for Petitioner *first* to undergo a jury trial on the issue of just compensation,

resulting in a final judgment order taking the property, before the right of the City to take it had been established through appeal.

The consequence for the petitioner was not only to lose ownership of her property to the City before it had been decided that the City had a right to take it, but in addition she suffered the burden of additional attorney's fees and court costs, and the return by the jury of an award substantially less than that offered by the City prior to trial. Hence, Petitioner was severely penalized because she wished to appeal the right to take. She received substantially less than she would have had she chosen not to pursue her rights through an appeal on the taking. Therefore, due to the very procedure forced upon Petitioner by the condemning authority, Petitioner was *de facto* denied her constitutional right of "just compensation" through "fair cash market value", and the advantages of negotiation and settlement.

There is no rational distinction which explains the difference in treatment under Illinois Case Law between "quick take" and "non quick take". Condemnees in Petitioner's situation should be guaranteed the same rights as those in "quick take" situations, and the responsibilities of municipalities *vis a vis* Condemnees should be identical to the responsibilities of the State in "quick take" situations. The practice outlined by the Illinois statutes as presently followed in Illinois practice is therefore in violation of the 14th Amendment Equal Protection clause and should be struck down.

As discussed above, four Illinois statutes make clear the conditions under which a municipality, in this case the City of Chicago, must operate in order to exercise the power of eminent domain. These four statutes are the

Cities and Villages Act, the Consolidated Urban Renewal Act of 1961, the Blighted Areas Redevelopment Act of 1947, and the Eminent Domain Act, in the sections indicated. The conditions set by these four statutes for the exercise of the power of eminent domain are that the property must be taken by "condemnation proceedings in conformity with the provisions of the constitution and the statutes of the State of Illinois," and specifically by "condemnation proceedings . . . in all respects in accordance with" the Eminent Domain Act.

The said four statutes establish that either the municipality, in this case the City of Chicago, must observe condemnation proceedings in conformity with the statutes or it does not have the right to take the property at all. The City of Chicago did not observe these condemnation proceedings in the taking of the subject property so it did not have the authority to take it.

This fact made the taking unconstitutional, which means that the taking was null and void.

C.

The Denial of Equal Protection by the Municipal Code of Chicago (Secs. 15-5 and 15-7)

Petitioner is aware that the next argument has been previously presented in part in an *Amicus* Brief filed in this Court prior to consideration of the Writ of Certiorari. However, since the parties have not directly presented this argument, and because Petitioner feels that this argument is of crucial importance to disposition of the case at bar, we are presenting it more fully in this Petition for Rehearing.

Section 15-7 of the Municipal Code of Chicago mandates that in "*conservation areas*" the Department of Urban

Renewal of the City must afford every property owner whose property is sought to be condemned an opportunity to be heard before such a proceeding will be approved.

> "The Department of Urban Renewal . . . shall have and exercise the following powers with respect to the development, redevelopment and replanning of conservation areas. . . .
>
> (b) approve *each use* of eminent domain for the acquisition of real property for the purposes, provided that every property owner affected by condemnation proceedings shall have the *opportunity to be heard* by the Department *before* such proceedings may be approved;" (Municipal Code, City of Chicago, Sec. 15-7) (Emphasis supplied)

This procedure insures to property owners in "conservation areas" the opportunity to have at least a quasi-judicial determination by the Department of Urban Renewal of the appropriateness of the administrative findings. In areas under consideration for "slum and blighted" designation, however, no such opportunity is granted the affected property owner. The personal notice given prior to the condemnation Court hearing on compensation is not sufficient, because at this stage several years *after* the "slum and blighted" designation has already been made, the opportunity for a Court hearing, as shown in the instant case, is illusory. At that time the acceptance by the Court of the administrative findings as *prima facie* evidence of the slum and blighted conditions in the area, *de facto* precludes any realistic investigation into the issue.

Petitioner contends that there is no logical distinction which can account for this difference in procedure. Fur-

ther, this difference discriminates against property owners in areas under consideration for designation as "slum and blighted" and ultimate condemnation and clearance in violation of the Equal Protection clause of the Fourteenth Amendment and must be struck down.

II. CONCLUSION

Wherefore, it is respectfully requested that this Honorable Court grant this Petition for Rehearing.

Respectfully submitted,

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